

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Request for  
a Variance from State Aid Rules  
by the City of Minneapolis that  
Would Allow Parking Along the North  
Curb of Como Avenue Southeast  
Between 15th Avenue Southeast and  
16th Avenue Southeast

FINDINGS OF FACT  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles at 9:30 a.m. on April 12, 1990 in Room 319, City Hall, 350 South 5th Street, Minneapolis, Minnesota.

Appearing on behalf of the Minnesota Department of Transportation was Donald J. Muetting, Assistant Attorney General, Government Services Section, 525 Park Street, Suite 500, St. Paul, Minnesota 55103.

Appearing on behalf of the City of Minneapolis was Jerome F. Fitzgerald, Assistant City Attorney, A-1700 Hennepin County Government Center, 300 South 6th Street, Minneapolis, Minnesota 55487.

The record in this proceeding closed after the post-hearing conference on June 28, 1990.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner. Parties should contact Mr. Kenneth Bjork, Manager, Administrative Procedures, 308 Transportation Building, St. Paul, Minnesota 55155 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

Whether the City of Minneapolis' request for a variance from State Aid Rules so as to allow parking along the north curb of Como Avenue Southeast between 15th Avenue Southeast and 16th Avenue Southeast should be granted pursuant to Minn. Stat. 162.09, subd. 3a (1988) and Minn. Rules pt. 8820.3300, subp. 3a.



Based upon all of the proceedings herein the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. The City of Minneapolis proposes to reconstruct Como Avenue Southeast between 15th Avenue Southeast and 22nd Avenue Southeast. The pavement, curb and gutter are over 30 years old, in poor condition and are in need of reconstruction. At the time of the street construction project a new storm sewer will also be installed to separate storm water from sanitary sewers. The storm sewer project will be constructed whether or not the street paving project occurs. After reconstruction of the road, surface drainage will be improved and the current costs of maintaining the street will be reduced.
2. Como Avenue Southeast is a major east-west arterial located in the southern part of Minneapolis east of the Mississippi River. Como Avenue Southeast carries traffic between the St. Paul and Minneapolis campuses of the University of Minnesota. Inter-campus Transit and Metropolitan Transit Commission buses make use of this street on a regularly scheduled basis. Pedestrian and bicycle traffic are also very high along the corridor. The neighborhood along the route is primarily residential with a cluster of businesses located generally on Como Avenue Southeast between 15th and 16th Avenues Southeast.
3. The reconstruction project is eligible for funding under the Municipal State-Aid Street System. The City of Minneapolis desires to obtain such funding. To qualify for funding Como Avenue Southeast must be reconstructed in a manner that complies with standards established by the Minnesota Department of Transportation for Urban State-Aid Streets.
4. Minn. Rules pt. 8820.9913 classifies urban roadways by average daily traffic into four categories:
  - (a) Low Density Collector-has a average daily traffic (ADT) range of 200-3000 ADT-serves as feeder facility from neighborhood and local streets to the collector/arterial network. Also serves access for business and residential development.
  - (b) High Density Collector-has a ADT range of 1000 to 7000 ADT collects traffic from local and feeder streets and connects with arterials. Can serve local business districts.
  - (c) Low Density Arterial-serves intra community travel. Augments high density arterial system and carries 5000 to 10,000 ADT.

(d) High Density Arterial-forms backbone of urban network.  
Serves as through facility and carries 8000 ADT and up.

5. The present traffic volume for Como Avenue Southeast between  
15th and  
18th Avenues Southeast is 10,805 Annual Average Daily Traffic (AADT).  
Pursuant  
to Minn. Rules pt. 8820.9913 this section of Como Avenue Southeast is  
classified as a high density arterial roadway.

6 . The present traffic volume for Como Avenue Southeast between 18th and 22nd Avenues Southeast is 8,650 AADT. Pursuant to Minn. Rules pt. 8820.9913 this section of Como Avenue Southeast is classified as a low density arterial roadway.

7. Standards for construction or reconstruction of high and low density urban roadways are contained in Minn. Rules pt. 8820.9912. For urban high density arterial routes this rule requires a curb-to-curb width of 52 feet (with no parallel parking lanes) and 72 feet (with parallel parking lanes). For urban low density arterial routes the rule establishes two standards: (a) a curb-to-curb width of 36 feet with no parking lanes and 48 feet with parallel parking lanes on both sides; (b) a curb to curb width of 50 feet with no parking lanes and 68 feet with parallel parking lanes on both sides.

8. Currently, the entire roadway along Como Avenue between 15th Avenue Southeast and 22nd Avenue Southeast has a 66 feet right-of-way. The curb-to-curb width along the route is 44 feet. The sidewalk along the route is 8 feet wide.

9. The City determined that it would not be practical to reconstruct Como Avenue Southeast according to the standards required by Minn. Rules pt. 8820.9912. The width of the right-of-way itself was inadequate. In addition, widening Como Avenue beyond its present curbs would require rebuilding stairs and sidewalks, removal of mature trees, relocation of fences, street lighting systems and Northern States Power's main line electrical feed system (mounted on approximately 12 utility poles). Reconstruction in this manner would cause an overall increase in costs for the project of approximately \$165,000, from \$995,000 to \$1,160,000.

10. In January 1989 the City of Minneapolis (hereinafter also referred to as "the City") filed with the Minnesota Department of Transportation requests for variances that would allow it to reconstruct Como Avenue Southeast within its present curb to curb width of 44 feet. The variance requests are as follows:

I. With respect to Como Avenue between 15th Avenue Southeast and 18th Avenue Southeast.

(a) A variance from the four-through lane requirement for Urban High-Density Arterial Roadway in order to reconstruct this route at its present configuration of two-through lanes and two-parallel parking lanes, with a peak hour parking ban (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) along the north curb between 15th and 16th Avenues Southeast.

(b) A variance from the required curb-to-curb width of 48

feet for a two-lane urban street with two parallel parking lanes in order to reconstruct this route at its present curb-to-curb width of 44 feet.

II. With respect to Como Avenue Southeast between 18th Avenue Southeast and 22nd Avenue Southeast.

(a) A variance from the required curb-to-curb width of 48 feet for a two-lane urban street with two parallel parking lanes in order to reconstruct this route at its present curb-to-curb width of 44 feet.

11. The Commissioner of Transportation appointed and convened a Variance Committee to investigate the variance requests. The Variance Committee consisted of Richard Cummings, Mower County Commissioner; Dick Hansen, St. Louis County Engineer; Orlin Ortloff, Waseca City Engineer; Millie Macleod, Council Member, Moorhead; and Don O'Brien, Mayor, Baxter.

12. Notice of the variance request was published in the State Register, 13 S.R. 1926, (Monday, February 6, 1989). Notice of the meeting in which the Variance Committee would consider the Minneapolis variance request was published in the State Register 13 S.R. 2003 (Monday, February 13, 1989). At a meeting on February 16, 1989, the Variance Committee unanimously approved the City's variance request.

13. Based upon the recommendation of the Variance Committee the Commissioner granted the variances for both sections for Como Avenue Southeast by letter dated March 8, 1989. Specifically the Commissioner granted a variance so as to permit a street width of 44 feet curb-to-curb with parking permitted on both sides, except during peak traffic hours (7:00-9:00 a.m. and 4:00-6:00 p.m.) when parking will be banned on the north curb of Como Avenue between 15th and 16th Avenues Southeast.

14. Neighborhood residents and local business people strongly oppose the parking ban on the north curb of Como Avenue between 15th and 16th Avenues. After hearing the complaints and concerns of residents and local business people the City Council was persuaded that the parking ban should be eliminated. The City Engineer was directed to request that the Commissioner of Transportation delete the 4:00 - 6:00 p.m. parking ban on the north curb of Como Avenue.

15. By letter dated September 1, 1989 the City of Minneapolis filed a second request with the Department of Transportation seeking an amendment to the previously granted variance. In this second request the City of Minneapolis sought to eliminate the requirement of a 4:00 to 6:00 p.m. peak hour parking ban between 15th and 16th Avenues Southeast.

16. The Commissioner appointed and convened a different Variance Committee to consider and determine the second variance request. The Variance Committee consisted of Alan Forsberg, Engineer, Blue Earth County; Kenneth Murphy, Council Member, Thief River Falls; Richard Cummings, Council Member, Mower County; Barb Sivonich, Council Member, Apply Valley; and Gary Sanders, Engineer, East Grand Forks. The Variance Committee was convened on Thursday,

September 28, 1989, pursuant to notice in the State Register.

17. The State Register notice of the City's second variance request did not state specifically the variance request being made. Instead, the notice restated the variance request made in the original filing by the City of Minneapolis. 14 S.R. 813 (September 18, 1989); 14 S.R. 862-863 (September 25, 1989). The City's specific request that the 4:00 - 6:00 p.m. parking ban be eliminated was not published in the State Register.



18. In support of its request to delete the parking ban the City stated as follows in its variance request:

The peak hour parking ban between 15th and 16th Avenues Southeast was proposed as a means of improving the operation of the intersection of Como Avenue Southeast at 15th Avenue Southeast. A capacity analysis of the intersection had concluded that a Level of Service "D" could be maintained.

The evening (4-6 pm) parking ban has been strongly opposed by both the residents and local business community. For that reason the signal operation at Como Avenue Southeast and 15th Avenue Southeast has been reanalyzed and we have determined that if the present "pedestrian-only" cycle at the intersection were eliminated, a longer traffic movement cycle could be initiated.

Based on the elimination of the "pedestrian-only" cycle, a new capacity analysis was performed (See Appendix "D") and it concluded that a Level of Service "C" can be maintained. This is an improvement in Level of Service for which the original variance was granted, and also allows parking on the northside of Como Avenue Southeast between 15th and 16th Avenues Southeast during the evening peak hours (4-6 P.M.).

19. The Variance Committee recommended to the Commissioner that the second variance request be denied. The Variance Committee gave the following reasons for its recommendation:

Previous variance request was a compromise with standards, restriction necessary for pedestrian, bicyclists, bus and truck traffic safety. Adjacent recreation area and business area create significant conflicts. High traffic volumes-major consideration.

20. The Commissioner adopted the recommendation of the Variance Committee. However, in his letter dated October 9, 1989, informing the City of his decision adopting the Variance Committee's recommendation he did not specifically deny the request to eliminate the 4:00 to 6:00 p.m. parking ban. Instead, the letter restates the language of the original variance request which the Commissioner indicates that he is denying. A subsequent letter dated October 18, from Mr. Gordon M. Fay, Director Office of State Aid, Minnesota Department of Transportation corrects this, indicating the original variance granted to the City is still valid and the requested amendment to the variance to eliminate peak hour parking was denied on October 9, 1989.

21. By letter dated December 6, 1989 the City of Minneapolis requested a contested case hearing on the denial.

22. On February 27, 1990 the Commissioner of Transportation issued a Notice of and Order for Hearing scheduling a contested case hearing on the

variance request to be held on April 12, 1990 at 9:30 a.m. in Room 319, City Hall, 350 South 5th Street, Minneapolis, Minnesota. The Notice of and Order for Hearing was served upon the City of Minneapolis, the Variance Committee, various Minneapolis City Council Members and other persons who had expressed an interest in the matter.

#### Analysis of the Denied Variance Request

23. Under the original variance granted to the City, parking is allowed on the south curb of Como Avenue between 15th and 16th but is prohibited along the north curb between peak hours 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. The second variance request seeks to delete the 4:00 - 6:00 p.m. parking ban. There are approximately 7 to 9 parking spaces on the north side of Como Avenue.

24. The intersection primarily at issue and giving rise to the most concern is the Como Avenue Southeast-15th Avenue intersection. 15th Avenue intersects Como Avenue Southeast at two locations. As indicated in the City Exhibits 2 and 3, traffic going north on 15th Avenue intersects Como Avenue approximately 50-75 feet east of where traffic going south on 15th Avenue intersects Como Avenue. Traffic moves north and south on 15th Avenue Southeast, and on Como Avenue Southeast, east and west.

25. The neighborhood area adjacent to the Como Avenue route is primarily residential with a large student population.

26. Buses from the Intercampus Transit system and the Metropolitan Transit Commission travel along Como Avenue on a regular schedule. These buses either turn off of or onto Como Avenue at the intersection. Approximately 200 buses use the route daily. At the present time the University of Minnesota plans to remove most of the buses that now use the Como Avenue Route and implement an alternative transportation service for shuttling students between campuses and parking lots.

27. A large flow of pedestrians and bicycle traffic to the University of Minnesota occurs in the morning between 8:00 and 10:00 a.m. Afternoon bicycle and pedestrian traffic from the University of Minnesota is more dispersed with a peak that occurs before 4:00 p.m.

28. On the southwest corner of the intersection is a park-recreation area. There is pedestrian traffic to and from the recreation area.

29. There are 11 businesses on the north and south curbs of Como Avenue between 15th and 16th Avenues. The sole parking for these businesses is along Como Avenue. Most of the available off-street parking is used by students who reside in the area.

30. The local businesses conducted a survey of their patrons and customers that indicated that 43% of the customers shop or use their services between 4:00 to 6:00 p.m. This survey is not based upon scientific principles and contains mathematical errors; despite these weaknesses the survey establishes that the time period 3:30 - 6:00 p.m. is the busiest time of the day for the business area. City Exs. 4-11.

31. Leaders of neighborhood organizations, local business people and City Council Members representing constituents in the area all support keeping the

parking spaces and expressed the i r concern about the potent i a I dec I ine of the neighborhood.

32. Local residents and business people view the business area on Como Avenue as a neighborhood anchor and as a component of the neighborhood identity. They expressed the concern that a decline in the businesses will have an adverse impact on the neighborhood itself.

33. Elimination of the parking spaces on the north curb of Como Avenue during peak hours 4:00 - 6:00 p.m. will have adverse economic consequences on the affected businesses.

34. The efficiency of traffic movements through an intersection is measured and described as a "Level of Service." City Exhibit 18 and State Exhibit C demonstrate the traffic levels of service. Level C is better for motorists than Level D. For example, at Level of Service C the average delay for traffic moving through the intersection is 15 to 25 seconds. At Level D, the average delay is 25.01 to 40.0 seconds. A Level of Service C is desired for State-Aid roads. An intersection that operates at a lower level of service will have cycle failures where the traffic movements will not clear the intersection on a single cycle, resulting in congestion.

35. The City initially proposed the 4:00 to 6:00 p.m. parking ban on the north curb of Como Avenue for the purpose of improving the operation of the intersection. Under the variance that was granted, with the parking ban in place, a Level of Service D would be provided by the intersection.

36. As a part of the request to eliminate the parking ban on the north curb, the City also proposes to change the traffic signal phasing at the intersection. At the present time there is a pedestrian-only phase of the traffic signal. The City proposes to eliminate the pedestrian only phase and require pedestrians to walk with the flow of the traffic. Changing the traffic signal in this manner will result in a Level of Service C even when the 4:00 to 6:00 p.m. parking ban is eliminated.

37. As City Exhibit 17 demonstrates under the variance that was granted the intersection would operate at a Level of Service D with an average delay of 31.4 seconds. Under the second variance request, with a change in the traffic signal phasing, the operation of the intersection will be improved to a Level of Service C, with an average delay of 23.8 seconds.

38. Conversion of the traffic signal at the intersection will have no

impact on the safety of the intersection. Elimination of the pedestrian-only phase will convert the intersection into an operation which is identical to most of the traffic signals in the City of Minneapolis. Conversion of the traffic signal operation can be done by the City of Minneapolis without a variance request.

39. The standards of construction for State-Aid roadways embodied in Minn. Rules pt. 8820 are necessary for implementing a logical, planned, safe and efficient transportation system. The standards are based upon traffic engineering methodology with substantial input from the public. The standards have as their purpose ensuring that the travelling public has a safe, efficient and uniform transportation system. The standards apply more readily to new construction as compared to areas that are already "built up" such as Como Avenue.

40. The City projects a growth in traffic volumes at the intersection of 112 of I percent per year for twenty years using September 1988 as a base year. The City's projected growth rate is inconsistent with that projected by the Metropolitan Council which officially forecasts a 60% greater growth rate than that relied upon by the City. Separate from this official forecast, a Metropolitan Council staff publication forecasts a growth rate over 3 times greater than the figure relied on by the City.

41. If the Metropolitan Council's forecast for growth in traffic volumes is used the Level of Service provided by the intersection could deteriorate to D or E if the variance is granted. State Ex. F.

Based upon the foregoing Findings of Fact the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Minnesota Commissioner of Transportation and the Administrative Law Judge have jurisdiction over this matter and authority to take the proposed action pursuant to Minn. Stat. 14.50 and 162.09, subd. 3a and Minn. Rules pt. 8820.3300, subp. 4 (1989). All relevant substantive and procedural requirements of law and rules have been fulfilled.

2. Minn. Stat. 162.09, subd. 1 authorizes the Commissioner to create a "municipal state-aid street system within cities having a population of 5000 or more." That section further provides in part as follows:

The system shall be established, located, constructed, reconstructed, improved, and maintained as public highways within such cities under rules and regulations, not inconsistent with this section, made and promulgated by the Commissioner as hereinafter provided.

3. The Commissioner is authorized by Minn. Stat. 162.09, subd. 3a (1988) to grant variances from the rules and from the engineering standards developed pursuant to section 162.13, subdivision 2.

4. Pursuant to Minn. Rules pt. 8820.3300, subp. 3a, the decision to grant a variance from state-aid standards must be based upon criteria contained in Minn. Rules 8820.3400, subp. 3 (1989). The governing criteria are as follows:

(a) Economic, social, safety, and environmental impacts which may result from the requested variance;

(b) effectiveness of the project and eliminating an existing and projected deficiency in the transportation system;

- (c) effect on adjacent lands;
- (d) number of persons effected;
- (e) effect on future maintenance;



(f) safety considerations as they apply to pedestrians, bicyclists, motoring public, and fire, police and emergency units; and

(g) effect that the rule and standards may have and imposing an undue burden on a political subdivision.

5. The City of Minneapolis has the burden of proving by a preponderance of the evidence that this second variance request should be granted by the Commissioner.

6. The City of Minneapolis has sustained its burden of proof by showing that the Como Avenue Southeast/15th Avenue Southeast intersection can be operated safely under the current traffic volumes at a Level of Service C even with the 4:00 to 6:00 p.m. parking ban on the north curb of Como Avenue eliminated.

7. At some unknown date in the future the traffic volumes at the Como Avenue Southeast/15th Avenue Southeast intersection may require that a 4:00 to 6:00 p.m. parking ban be implemented on the north curb of Como Avenue Southeast.

8. Due to the uncertainty of the forecast of future traffic volumes at the Como Avenue Southeast/15th Avenue Southeast intersection it will be necessary for the City of Minneapolis to survey the traffic volumes and perform a traffic capacity analysis at four year intervals to ascertain whether the intersection continues to operate safely and at a Level of Service C.

9. Any finding of fact more appropriately considered a conclusion and any conclusion more properly termed a finding of fact are hereby expressly adopted as such.

10. The Administrative Law Judge makes these conclusions for the reasons given in the attached Memorandum. Where necessary, reasons contained in the Memorandum are adopted and incorporated herein as conclusions.

Based upon the foregoing conclusions the Administrative Law Judge makes the following:

#### RECOMMENDATION

That the City of Minneapolis' request for a variance eliminating the 4:00 to 6:00 p.m. parking ban on the north curb of Como Avenue Southeast is hereby GRANTED, but that as a condition of granting this variance, the City of Minneapolis shall survey the traffic volumes at 4 year intervals and report to the Minnesota Department of Transportation regarding the Level of Service provided by the intersection with the understanding that should the Level of Service fall below level C, it will be necessary to implement a 4:00 to 6:00 p.m. parking ban on the north curb of Como Avenue Southeast.

Dated: July 27 1990.

ALLEN E. GILES  
Administrative Law Judge

-9-

## NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1 the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded cassette tape nos. 8618, 8622, 8667 and 8772.

## MEMORANDUM

Notice of the City of Minneapolis Second Variance Request

Minn. Stat. 162.09, subd. 3a (1988) and Minn. Rules pt. 8820.3300, subp. 2 require that notice of a variance request filed with the Commissioner be published in the State Register. For example, subdivision 3a provides in part as follows:

The Commissioner shall publish notice of the request in the state register and give notice to all persons known to the Commissioner to have an interest in the matter.

Notice of the City's second variance request was not accurately published in the State Register. As indicated in the Findings, the publication in the State Register restated the terms of the original variance request.

Briefs of the parties did not address this notice failure. The Administrative Law Judge convened a post-hearing conference to consider the issues raised by the failure to publish in the State Register. At the post-hearing conference counsel for the parties noted that no prejudice resulted from the failure to publish in the State Register and that the failure to publish was cured by the publication in the State Register of the Notice of Hearing on the second variance request. Counsel asserts that persons with an interest and/or affected by the variance request have made their views known at the hearing on this matter. Both parties desire that the merits of the issue at hand be decided and request that the Administrative Law Judge conclude that notice requirements have been substantially fulfilled.

The goal of Minn. Stat. 162.09, subd. 3a and Minn. Rules pt. 8820.3300, subp. 2 is to provide the public notice and opportunity to comment on a variance request. At the hearing the Administrative Law Judge heard testimony from representatives from businesses directly affected by the variance request, leaders of residential organizations concerned about the variance request and from political leaders expressing their constituent concerns about the variance request. No person complained of any prejudice. Given this level of participation by persons directly affected by the variance request the Administrative Law Judge believes that the purpose of the rule and statute have

been accomplished. This case is distinguishable from those cases where a failure to provide notice required by statute or rule rendered the proceeding inadequate. In *Re Wilmarth Line*, 299 N.W.2d 731 (Minn. 1980). Unlike the *Wilmarth Line* case where there was inadequate notice of the application and the hearing, in this case there was effective notice of the hearing. Not only was the hearing notice properly published in the State Register, it was also mailed to a number of interested groups and individuals. The effectiveness of the

notice of hearing is demonstrated by the presence and testimony by affected persons. For these reasons the Administrative Law Judge concludes that the notice requirements have been substantially fulfilled.

The City of Minneapolis has Sustained its Burden of Proof

Applicable law imposes the burden of proof on the party seeking a proposed action by a state agency in a contest case proceeding. Minn. Rules pt. 1400.7300, subp. 5; Application of City of White Bear Lake, 311 Minn. 146, 247 N.W.2d 901, 904 (1976). The City admits that it has the burden of proving that a variance should be granted.

Minn. Rules pt. 8820.3400, subp. 3 establishes the criteria that apply to the determination of whether or not a variance request should be granted by the Commissioner. Those criteria are stated in the Conclusions of this Recommendation and are not repeated here. The chief issues to be considered are: (1) Will traffic congestion be aggravated; (2) will the intersection be any less safe; and (3) will businesses be adversely affected.

The City has proved by a preponderance of evidence the following: (a) That local businesses along Como Avenue will be economically harmed by the 4:00 to 6:00 p.m. parking ban; (b) that the businesses along Como Avenue serve as an anchor to the residential area and are an important component of the neighborhood identity; (c) that at present traffic volumes the operation of the intersection can be improved to a Level of Service C even with the 4:00 to 6:00 p.m. parking ban eliminated; (d) that changing the traffic signal phasing at the intersection will improve the operation of the intersection; and (e) that the operation of the intersection will not be any less safe as a result of the change in the traffic signal phasing eliminating the pedestrian only cycle.

The primary response of the Department is that the standards of construction of the State-Aid roadways are based upon traffic engineering methodology and are necessary for a uniform, safe and efficient transportation system. As such the standards are entitled to substantial deference and any departure should be cautiously undertaken. In this regard, the Department notes that a variance has already been granted the City which allows it to reconstruct Como Avenue within the current curb-to-curb width and allows

parking 24 hours except for on the north curb of Como Avenue between peak hours 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.

The Administrative Law Judge concurs that substantial deference must be given to the engineering standards embodied in the rules. However, the Administrative Law Judge believes that such deference has been accorded the Como Avenue project by the Variance Committee that granted the original variance. The first Variance Committee considered the confluence of bus, bicycle and pedestrian traffic; it also considered pedestrian movements to and from the recreation area. After consideration of these factors the first Variance Committee determined that the City should be allowed to rebuild Como Avenue within its present curb-to-curb width. The Committee implicitly concluded that the safety and congestion issues were not so serious as to outweigh the arguments supporting the variance.

After the first variance was approved the only issue before the second Variance Committee was the impact on the intersection created by the removal of the 4:00 to 6:00 p.m. parking ban on the north curb of Como Avenue. Therefore,

the question presented to the second Variance Committee was as follows: will the elimination of the 4:00 to 6:00 p.m. parking ban combined with the change in the traffic signal phasing make the intersection any less safe or aggravate traffic congestion. The record does not reflect that the second Variance Committee addressed these specific questions. Instead, the second Variance Committee raised issues that were addressed and decided by the first Variance Committee.

The failure of the second Variance Committee to focus on the incremental difference upon the intersection of the second variance request is a major weakness in the decision by the second Variance Committee. It is also the chief weakness in the position taken by the Department. It is not enough for the second Variance Committee to say that a variance has already been granted. It was also necessary for the Committee to consider the impact of eliminating the 4:00 to 6:00 p.m. parking ban and changing the traffic signal. At a minimum, the second Variance Committee should have provided a reason why the request was being denied even though the proposal would improve the traffic flow through the intersection.

The City has shown that the traffic flow through the intersection will be improved to a Level of Service C. There is no evidence that the elimination of the 4:00 to 6:00 p.m. parking ban will adversely affect the safety of the intersection. The Department's own expert witness Mr. Richard Wolsfeld testified that the conversion of the traffic signal to eliminate the pedestrian only phase would not adversely affect the level of safety at the intersection. Thus, the record indicates that under the second variance request, with the parking ban eliminated, traffic congestion will be reduced with no increase in safety problems at the intersection. Under the circumstances the second request should be granted.

#### Uncertain Impact\_-of Future Traffic Volumes at the Intersection

Forecasts of future traffic volumes at the intersection are in conflict in this record. The City maintains that traffic volumes at the intersection will grow at the rate of 112 of I percent per year for the next 20 years. The Metropolitan Council predicts a 60 percent greater growth rate for the intersection. At some point, an increase in traffic volumes will adversely affect the operation of the intersection. Therefore, growth in traffic volumes should be periodically monitored to ascertain the operation of the intersection. A four year interval has been selected because it provides a reasonable period of time from which growth patterns may be observed.

